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MEMORANDUM

TO: Docket Control Center

FROM: Steven M. Olea  
Director  
Utilities Division

EA for SMO

ORIGINAL

DATE: November 20, 2014

RE: STAFF REPORT REGARDING THE PROPOSED RULEMAKING TO MODIFY  
THE RENEWABLE ENERGY STANDARD AND TARIFF RULES  
(DOCKET NO. RE-00000C-14-0112)

Attached is the Staff Report regarding (1) Utilities Division's summary of written and oral comments received after the October 10, 2014 publication in the Arizona Administrative Register of the Notice of Proposed Rulemaking to Modify the Renewable Energy Standard and Tariff Rules and the Utilities Division's responses to those comments, and (2) Staff's response regarding any updating that is necessary to the Economic, Small Business, and Consumer Impact Statement. Staff recommends approval of the Proposed Rulemaking with or without Staff's November 3, 2014 optional wording clarifications.

SMO:RGG:tdp/JFW

Originator: Robert Gray

Arizona Corporation Commission

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**STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION**

**PROPOSED RULEMAKING TO MODIFY THE RENEWABLE ENERGY STANDARD  
AND TARIFF RULES**

**DOCKET NO. RE-00000C-14-0112**

**NOVEMBER 20, 2014**

## STAFF ACKNOWLEDGMENT

The Staff Report for Docket No. RE-00000C-14-0112, was the responsibility of the Staff member listed below.

A handwritten signature in black ink, appearing to read 'Robert Gray', with a long horizontal flourish extending to the right.

Robert Gray  
Executive Consultant

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## **INTRODUCTION**

On March 31, 2014, Commission Staff ("Staff") filed a memo with docket control to open generic docket for the purpose of commencing a proposed rulemaking on the Renewable Energy Standard ("RES") rules as directed in Arizona Corporation Commission Decision No. 74365. On February 26, 2014, the ACC issued Decision No. 74365. In that Decision, the Commission ordered:

"that the REST rules shall be opened for the purpose of developing a new methodology for utilities to comply with renewable energy requirements that is not based solely on the use of RECs...and that Staff shall, after consultation with utilities, interveners in this docket, and other interested stakeholders, file proposed new rules no later than April 15, 2014 with the Commission to address a Notice of Proposed Rulemaking on this matter at its May 2014 Open Meeting or as soon as is practical after that date." (page 55, lines 7-13)

On April 4, 2014 Staff filed its Notice of Compliance Filing Per Decision No. 74365, in which Staff provided seven options for the Commission to consider. On July 22, 2014, the Commission directed Staff to move forward with preparing draft RES rules. On October 10, 2014, the Notice of Proposed Rulemaking was published in the Arizona Administrative Register.

In accordance with the Administrative Procedure Act, A.R.S. 41-1001 et seq., and Administrative Law Judge's directive to Staff at the November 10 and 12, 2014 oral proceedings held on this proposed rulemaking, Staff is filing its summary of written and oral comments received since the October 10, 2014 publication of the Notice of Proposed Rulemaking, along with Staff's responses thereto. Staff is also filing its discussion of the Economic, Small Business, and Consumer Impact Statement.

**SUMMARY OF WRITTEN AND ORAL COMMENTS AND STAFF RESPONSES TO COMMENTS**

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
Tucson Electric Power Company ("TEP") and UNS Electric, Inc. ("UNS")	TEP and UNS have reviewed the proposed NOPR revisions to the REST Rules and Staff's Comments. The Companies have no further comments on the proposed revisions at this time.	No change is needed in response to this comment.
The Alliance for Solar Choice ("TASC")	TASC supports comments of Solar Energy Industry Association ("SEIA"). SEIA did not file any responsive comments, so the comments that TASC supports are SEIA's initial comments filed November 10, 2014.	See response to SEIA comments. No change is needed in response to this comment.
Arizona Public Service Company ("APS")	<p>[initial comments filed November 10, 2014]</p> <p>Supports the proposed NOPR modifications to the REST Rules as they provide an effective solution to a lingering issue-compliance within an evolving renewable environment. APS is analyzing Staff's comments and will respond, if necessary, in responsive comments on November 14.</p> <p>APS has asked the Commission for guidance on how to demonstrate compliance when it no longer purchases RECs with direct cash incentives.</p>	<p>Staff acknowledges this supportive comment. No change is needed in response to this comment.</p> <p>See discussion of this issue in regard to APS' responsive comments.</p> <p>Staff acknowledges this supportive comment. No change is needed in response to this comment.</p>

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	<p>The NOPR's proposed revisions provide a reasonable framework for considering compliance when direct cash incentives are no longer available.</p> <p>APS supports the NOPR proposed rule changes because they provide a reasonable post-incentive path to compliance, preserve the existing REST compliance and DE carve-out requirement, and resolve perceived "double-counting" of RECs without imposing additional costs.</p> <p>Any attempt to factor in the impacts of EPA's Clean Power Plan ("CPP") is premature.</p> <p>[responsive comments filed November 14, 2014] APS believed that the purpose of the October 10, 2014 NOPR was to establish a means for the Commission to determine compliance with the REST rules in a manner that did not require the utilities to acquire, then retire, DE RECs. Although APS reaffirmed its support for the NOPR, APS</p>	<p>Staff acknowledges this supportive comment. No change is needed in response to this comment.</p> <p>Staff agrees that it is premature to make changes to the REST rules based on EPA's proposed CPP. No change is needed in response to this comment.</p> <p>Under the existing REST rules, the NOPR modifications, and Staff's November 3<sup>rd</sup> optional wording clarifications, the only way to demonstrate compliance under the REST rules is via RECs. There is no change in how an affected utility demonstrates compliance. However, under both the NOPR modifications and Staff's November 3<sup>rd</sup> filing, an affected utility is provided with additional</p>

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	<p>is struggling to understand the impact of Staff's November 3, 2014 comments, and to understand how APS would establish compliance under the new changes. It appears that Staff's modifications remove alternative means to demonstrate compliance by eliminating the nexus between compliance with the REST rules and the Commission's consideration of all available information. APS perceived in the NOPR preamble a flexibility to determine compliance, but, per Staff's November 3 comments, it appears that all is left for the Commission to determine compliance is whether the utility has sufficient utility-owned RECs to meet the annual REST's quantitative requirements. If so, utilities will have to purchase RECs from third parties, resulting in a negative impact on customers. In the alternative, utilities may choose to request waivers instead-an outcome that challenges the very purpose of the rules. Staff's November 3 comments introduce uncertainty, making it difficult to determine compliance and leaving the fundamental question unanswered. APS is open to understanding more about</p>	<p>clarity in how it can demonstrate that it is not out of compliance. Namely the Commission would formally recognize that it may consider all available information in considering a waiver request from an affected utility, while simultaneously ensuring that the integrity of RECs is maintained. Staff's November 3<sup>rd</sup> revisions do not change this path to demonstrating an affected utility is not out of compliance. Thus an affected utility is not limited to the option of expending additional ratepayer funds to acquire RECs, as it has the alternative of seeking a waiver of the REST rules. No change is needed in response to this comment.</p>



INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	<p>how utilities can establish compliance under Staff's revisions, but, for now, it appears the only two compliance options are acquiring RECs or obtaining a waiver. If so, the Commission should reject the Nov. 3 revisions, and adopt the modifications in the NOPR.</p>	
<p>U.S. Department of Defense and Federal Executive Agencies</p>	<p>Is concerned that utilities will be allowed to count non-utility owned RECs toward compliance under the NOPR modifications as DOD/FEA believes acknowledgement is equivalent to counting RECs towards compliance, possibly resulting in double counting. DOD/FEA therefore opposes the NOPR modifications.</p> <p>Staff's November 3<sup>rd</sup> wording changes may address concerns with the NOPR modifications but confirmation should be sought from the Center for Resource Solutions.</p>	<p>Staff believes that the NOPR modifications make it clear that acknowledgement of RECs is not for compliance purposes. RECs not owned by the utilities may not be used by the utilities to demonstrate compliance and thus no double counting would occur. No change is needed in response to this comment.</p> <p>Staff has been in communication with CRS and CRS indicated, in an e-mail Staff docketed on 11-13-14, that it does not believe the proposed changes, with Staff's November 3<sup>rd</sup> wording changes, would result in double counting. No change is needed in response to this comment.</p>
<p>Vote Solar</p>	<p>Vote Solar believes key provisions are vague. The proposed rules appear to provide that non-utility owned RECs will be acknowledged by the Commission for informational purposes. Vote</p>	<p>Staff believes the NOPR modifications are clear and that they provide protection for the owners of non-utility owned RECs. No change is needed in response to this comment.</p>

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	<p>Solar proposes that the Commission be very clear as to whether the rules' language means that non-utility owned RECs can be used by the utility for REST compliance. If so, Vote Solar opposes that approach, because RECs have value and may not be conveyed for free to the utility. Vote Solar shares the Commission's intent to avoid double-counting, but the proposed language will compromise REC value because "acknowledging" non-utility owned RECs for REST compliance creates a double-counting scenario. When customer owned RECs are used to track REST compliance, the utility must pay the customer for the value of the REC. RECs cannot retain market value if they are claimed by a utility for RPS compliance. If the Commission adopts the proposed rule changes, customers owning RECs in Arizona will be unable to receive Green-e Energy and other certifications for their RECs.</p> <p>The clarifying modification proposed by Staff "...will be</p>	<p>Staff acknowledges this supportive comment. No change is needed in</p>

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	<p>acknowledged for reporting purposes, but will not be eligible for compliance with R14-2-1804 and-1805” clarifies the vague language in the proposed rule changes. If Staff’s proposed modifications in its comments are adopted, the value of RECs will not be devalued. Vote Solar’s concerns with the proposed changes are largely addressed by the Staff’s November 3 modifications, and we therefore support the proposed rule changes if Staff’s modifications are adopted.</p> <p>We recommend that the Commission begin using WREGIS (or other tracking system) to track REST compliance, to ensure that any RECs used for TT compliance is appropriately issued, tracked and retired.</p>	<p>response to this comment.</p> <p>This proposal is outside the scope of this proposed rulemaking. No change is needed in response to this comment.</p>
Residential Utility Consumer Office (“RUCO”)	<p>[initial comments filed on November 10, 2014]</p> <p>The Commission should consider alternative policies to resolve the REC issues.</p>	<p>The Commission has considered a wide variety of options in over two years of proceedings leading to the currently proposed NOPR modifications. No change is needed in response to this comment.</p>

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	<p>There is no version of the renewable energy policy that stops the outflow of RECs to other states.</p> <p>We support Staff's clarification, as it will avoid debate each year on the meaning behind the term "acknowledge".</p> <p>The Rule revision, with Staff's clarification, appears to meet the end goal of Commissioner Brenda Burns to ensure that there will not be a claim on the RECs of solar adopters.</p> <p>[responsive comments filed on November 14, 2014]  RUCO suggests adding the following language to the REST rules: "Affected utilities, upon approval by the Commission, may be authorized to use non-DG RECs (bundled or unbundled) to satisfy compliance of the DG carve-out. However, the amount of non-DG RECs applied to the carve-out cannot exceed the number of RECs and/or kWhs produced by customers who have not exchanged their RECs to the utility in</p>	<p>This issue is outside the scope of rule changes contemplated in this proceeding but may be something the Commission could consider in the future. No change is needed in response to this comment.</p> <p>Staff acknowledges this supportive comment. No change is needed in response to this comment.</p> <p>Staff acknowledges this supportive comment. No change is needed in response to this comment.</p> <p>Staff does not believe it is necessary to add the language proposed by RUCO to the REST rules. No change is needed in response to this comment.</p>

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	<p>their respective service territory.” RUCO argues that this language will enable future policies that allow DG adopters a choice to keep their RECs or provide them to the utility, and, if the customer decides to keep their RECs, the utility will incur a small charge that will cover the cost of procuring inexpensive, unbundled RECs.</p>	
<p>Solar Energy Industries Association</p>	<p>[initial comments filed November 10, 2014]</p> <p>We support Staff’s November 3, 2014 recommendations as set forth in its comments. The Commission’s proposal with Staff’s recommended modifications is aligned with the Commission’s intent of tracking the DE market while protecting ratepayer interests in RECs.</p> <p>We agree with Staff that these clarifying modifications do not amount to a “substantial change.” Therefore, we recommend that the Commission adopt its proposal as modified by Staff.</p>	<p>Staff acknowledges this supportive comment. No change is needed in response to this comment.</p> <p>Staff acknowledges this supportive comment. No change is needed in response to this comment.</p>

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
Arizona Solar Deployment Alliance	[comment filed on November 14; ] ASDA supports the REST rule modifications proposed in this docket. ASDA's main interest is to maintain the DG carve out currently contained in the REST rules and appreciates the Commission's commitment to maintaining the carve out.	Staff acknowledges this supportive comment and agrees that the NOPR modifications and Staff's November 3 <sup>rd</sup> filing preserve the DG carve out. No change is needed in response to this comment.
Terry Finefrock	[comment filed on November 14; Mr. Finefrock also provided comment at the Tucson public comment session] Mr. Finefrock said it appears that the NOPR modifications may allow double-counting of RECs.	Staff believes that the NOPR modifications make it clear that RECs not owned by the utilities may not be used by the utilities to demonstrate compliance and thus no double counting would occur. No change is needed in response to this comment.
TUCSON PUBLIC COMMENT SESSION		
Robert Bulechek (an energy efficiency consultant and chair of the Tucson-Pima Metropolitan Energy Commission)	Mr. Bulechek fears the REST standard will be weakened if a utility can count RECs it doesn't own. RECs are a way to acknowledge that clean energy has health and climate effects.  If a utility uses RECs for compliance purposes, it should have to pay for them.	Staff does not believe the REST standard will be weakened by the NOPR modifications and the Staff November 3 <sup>rd</sup> filing. Staff notes that utilities will not be allowed to count RECs they do not own towards compliance. No change is needed in response to this comment.  Staff believes that there is nothing in the NOPR modifications or Staff's November 3 <sup>rd</sup> filing that would allow a utility to use RECs they don't own for compliance

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<p>Ryan Anderson  (the planning, sustainability, and transportation policy advisor to City of Tucson Mayor Jonathan Rothschild).</p>	<p>Mr. Anderson read prepared written comments of Mayor Rothschild into the record. Mayor Rothschild urges Commission to preserve RECs' integrity; help to keep the solar market thriving; believes track and recording of DE, if used to satisfy utility REC requirements would erode REC market and compromise REST and pursue policies that don't result in double-counting or a regulatory taking.</p> <p>The Mayor opposed the initial draft of the revisions, but Mr. Anderson believes, based on the discussion at the Public Comment meeting, that Staff's November 3<sup>rd</sup> filing may satisfy the Mayor's concerns.</p>	<p>purposes.</p> <p>Staff believes that both the NOPR modifications and Staff's November 3<sup>rd</sup> wording changes achieve the goals discussed by Mayor Rothschild. No change is needed in response to this comment.</p> <p>Staff acknowledges this supportive comment. No change is needed in response to this comment.</p>
<p>Bruce Plenk</p>	<p>Mr. Plenk thinks Staff November 3<sup>rd</sup> comments regarding use of word "acknowledge" in proposed rules is an important clarification.</p> <p>Mr. Plenk believes it may be useful to seek comments from Center for Resource Solutions.</p>	<p>Staff acknowledges this supportive comment. No change is needed in response to this comment.</p> <p>Staff has been in communication with CRS and CRS indicated, in an e-mail Staff docketed on 11-13-14, that it does not believe the proposed changes, with Staff's</p>

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	Mr. Plenk believes the Commission should preserve the original intent of REST rules, and expand the solar market.	November 3rd wording changes, would result in double counting. No change is needed in response to this comment.  Staff believes that the original intent of the REST rules is preserved by both the NOPR modifications and Staff's November 3 <sup>rd</sup> wording changes. No change is needed in response to this comment.
Terry Finefrock	Mr. Finefrock would like to see CRS comment on the proposed revisions.  Mr. Finefrock believes there may be contract law implications related to ownership of RECs resulting from the NOPR modifications and Staff's November 3 <sup>rd</sup> wording changes.	Staff has been in communication with CRS and CRS indicated, in an e-mail Staff docketed on 11-13-14, that it does not believe the proposed changes, with Staff's November 3rd wording changes, would result in double counting. No change is needed in response to this comment.  Staff does not believe there are any contract law implications resulting from the NOPR modifications or Staff's November 3 <sup>rd</sup> wording changes. No change is needed in response to this comment.
PHOENIX PUBLIC COMMENT SESSION		
Arizona Solar Deployment Alliance	ASDA supports the REST rule modifications proposed in this docket. ASDA's main interest is to maintain the DG carve out currently contained in the REST rules and appreciates the Commission's commitment to maintaining	Staff acknowledges this supportive comment and agrees that the NOPR modifications and Staff's November 3 <sup>rd</sup> filing preserve the DG carve out. No change is needed in response to this comment.



INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	the carve out.	
APS	In addition to reiterating its written comments, APS noted that CRS believes that Staff's modifications would not lead to double counting, but say in their email that they can't determine for sure until the final rule language is available, and, even then, future Commission action could make the RECs ineligible for Green-e energy.	See discussion of APS initial comments filed November 10, 2014 and APS responsive comments dated November 14, 2014. No change is needed in response to this comment.
RUCO	RUCO believes that its proposed additional language, submitted in its November 14 comments, will set up a "no regrets" policy mechanism that, in the future, will allow utilities to use non-DG RECs for REST compliance, and this language may help to comply with EPA rules in the future, if that proves necessary.	See discussion of RUCO initial comments filed November 10, 2014 and responsive comments filed on November 14, 2014. No change is needed in response to this comment.

**DISCUSSION OF THE ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**

In the September 19, 2014 Notice of Filing Proposed Rulemaking Documents with the Secretary of State, Staff provided its preliminary summary of the economic, small business, and consumer impact. Staff has reviewed the preliminary summary contained in the September 19, 2014 Notice and does not have any changes to it at this time.

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Docket No. RE-00000C-14-0112

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